

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE

Assigned on Briefs September 22, 2009

**STATE OF TENNESSEE v. RUSTY RHOTON**

**Appeal from the Criminal Court for Sullivan County**  
**No. S53,807 R. Jerry Beck, Judge**

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**No. E2008-02592-CCA-R3-CD - Filed March 9, 2010**

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The Defendant, Rusty Rhoton, entered a “best interest” guilty plea pursuant to North Carolina v. Alford, 400 U.S. 25 (1970), to two counts of assault, Class A misdemeanors. The trial court denied alternative sentencing and sentenced him to consecutive sentences of eleven months and twenty-nine days to be served in jail. The Defendant contends that the trial court erred in denying alternative sentencing. Following our review, we affirm the judgments of the trial court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Criminal Court are Affirmed.**

D. KELLY THOMAS, JR., J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., and ROBERT W. WEDEMEYER, JJ., joined.

Stephen M. Wallace, District Public Defender and Andrew J. Gibbons, Assistant Public Defender (on appeal); and Paul A. Harr (at trial), Bristol, Tennessee, attorneys for appellant, Rusty Rhoton.

Robert E. Cooper, Jr., Attorney General and Reporter; Cameron L. Hyder, Assistant Attorney General; H. Greeley Wells, Jr., District Attorney General; and Kaylin Hortenstine, Assistant District Attorney General, attorneys for appellee, State of Tennessee.

**OPINION**

In the Defendant’s “best interest” guilty plea submission hearing on June 19, 2008, the State submitted that the Defendant had an argument with his fiancée, Rebecca Barnett, while driving with her and their son in the car. During the argument, the Defendant began

driving erratically and swerved into another lane. In response, Ms. Barnett “grabbed the steering wheel and tried to pull the car back over into the lane.” The Defendant bit her hand and grabbed her left arm to remove it from the steering wheel. After the Defendant, Ms. Barnett, and their son arrived at their destination, the Defendant’s parents’ house, they got into another argument. This time, the Defendant retrieved a gun from the house to prevent Ms. Barnett from leaving the property with their son. The Defendant’s father, Mr. Ronnie Rhoton, tried to calm the situation, and the Defendant aimed the gun at Mr. Rhoton’s feet. The Defendant’s mother, Mrs. Charlotte Rhoton, ran next door and called 9-1-1 for help. When the Defendant realized that his mother called 9-1-1, he gave Mr. Rhoton the gun and left the property. When police officers arrived, they observed that Ms. Barnett had bite marks and bruising on her left arm.

After hearing the State’s recitation of the facts, the trial court sentenced the Defendant to two consecutive sentences of eleven months and twenty-nine days in the Sullivan County Jail with a seventy-five percent jail release date and a one hundred dollar fine in each case. As a special condition of the plea agreement, the trial court instructed the Defendant that he was not allowed to have any “violent contact” with Mr. Rhoton or Ms. Barnett. On August 29, 2008, the trial court amended the order pursuant to Ms. Barnett’s request and instructed the Defendant that he was not to have any contact with Ms. Barnett.

On November 17, 2008, the trial court conducted an alternative sentencing hearing. The State submitted a presentence report which showed that the Defendant did not have a significant criminal history. However, Ms. Barnett testified that the Defendant contacted her several times in violation of the trial court’s no contact order. The State submitted several electronic mail messages and instant messages from the Defendant to Ms. Barnett that were sent after the entry of the trial court’s no contact order. Ms. Barnett also testified that the Defendant came to her house in the middle of the night on two separate occasions and tried to talk to her. She could not remember the exact dates of the visits, but she believed that the first visit was at the beginning of September 2008 and the second visit was either on September 29, 2008 or September 30, 2008. Ms. Barnett stated that she called the police one of the times that the Defendant tried to talk to her at her house and that she felt threatened by his visits and electronic mail messages. On cross-examination, Ms. Barnett admitted that the Defendant had filed for custody of their child and that a hearing was scheduled for December 4, 2008.

Mrs. Rhoton, the Defendant’s mother, also testified. Most of her testimony related to the Defendant’s illnesses and the fact that he was receiving disability insurance. Mrs. Rhoton also testified regarding the Defendant’s recent hospitalization for a “complex partial seizure.” He was discharged from the hospital on September 19, 2008 after he was held for another three days because he was having trouble with his memory. Specifically, the

Defendant tried to visit Ms. Barnett, and when told that there was a no contact order, the Defendant stated that the order was “dropped.”

### ANALYSIS

The Defendant contends that the trial court erred in denying any form of alternative sentencing because he was an eligible candidate for alternative sentencing and none of the three rationales for denying alternative sentencing were applicable in his case. Tenn. Code Ann. § 40-35-103(a)(A-C). The State argues that the Defendant failed to show the impropriety of his sentence and that the record fully supports the trial court’s sentencing decision.

In denying alternative sentencing, the trial court noted the Defendant’s minimal criminal history but stated that the Defendant’s behavior after the no contact order was in place indicated that he was a danger to Ms. Barnett. Specifically, the trial judge believed that “no matter what order [he] put down,” the Defendant would violate the order and harass the victim.

Misdemeanor sentencing is controlled by Tennessee Code Annotated section 40-35-302, which provides that the trial court shall impose a specific sentence consistent with the purposes and principles of the 1989 Criminal Sentencing Reform Act. Tenn. Code Ann. § 40-35-302(b). Misdemeanor sentencing is designed to provide the trial court with continuing jurisdiction and a great deal of flexibility. See State v. Troutman, 979 S.W.2d 271, 273 (Tenn. 1998); State v. Baker, 966 S.W.2d 429, 434 (Tenn. Crim. App. 1997). However, the trial court should still consider the nature and circumstances of the offense; the defendant’s criminal record; his or her background and social history; his or her present condition, both physical and mental; the deterrent effect on the defendant; and the defendant’s potential for rehabilitation or treatment. See Tenn. Code Ann. § 40-35-102, -103, -210.

In this case, the Defendant assaulted two different people, and the second assault involved the use of a gun. We must also note that the Defendant violated the trial court’s no contact order on several occasions, and the Defendant’s potential for rehabilitation is questionable given his behavior in the courtroom, his bizarre electronic mail messages to one of the victims in this case, and his medical history. After reviewing the record, we conclude that the trial court did not err in determining the Defendant’s sentence and in denying him probation or alternative sentencing.

## CONCLUSION

In consideration of the foregoing and the record as a whole, the judgments of the trial court are affirmed.

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D. KELLY THOMAS, JR., JUDGE